

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Amendment of Parts 1, 21, 73, 74 and 101 of the  
Commission's Rules to Facilitate the Provision of  
Fixed and Mobile Broadband Access, Education  
and Other Advanced Services in the 2150-2162 and  
2500-2690 MHz Bands

Transforming the 2.5 GHz Band

WC Docket No. 18-120

**PETITION FOR RECONSIDERATION BY BURT LUM, STRATEGY OFFICER  
FOR THE HAWAII BROADBAND INITIATIVE**

Burt Q. C. Lum

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Hawaii Broadband Initiative  
Department of Business, Economic Development & Tourism  
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(808) 587-9001

Date: November 25, 2019

## **I. Introduction**

The Hawaii Broadband Initiative is a program of the Department of Business, Economic Development & Tourism of the State of Hawai‘i. Mr. Burt Lum is the Strategy Officer for the Hawaii Broadband Initiative, and in this capacity, he is tasked with advancing opportunities that increase access to broadband service for the State of Hawai‘i (both residents and businesses), including Native Hawaiians.<sup>1</sup>

## **II. Factual Background**

In 2018, the Commission released a Notice of Proposed Rulemaking (“NPRM”) seeking comment on opening a Tribal Priority Filing Window (“Tribal Window”) for access to the 2.5 GHz spectrum band.<sup>2</sup> On July 10, 2019 the Commission adopted a Report and Order (“Report & Order”) establishing eligibility criteria for the Tribal Window.<sup>3</sup> Under the Report & Order, an applicant for the Tribal Window must be “a federally recognized American Indian tribe or Alaska Native Village; or an entity that is owned and controlled by a federally-recognized Tribe or a consortium of federally-recognized Tribes.”<sup>4</sup>

Among other criteria, applicants in the Tribal Window must request a license on tribal land, “which is defined to be any federally recognized Indian tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments, see §54.400(e), as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat

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<sup>1</sup> See DEP’T OF COMMERCE & CONSUMER AFFAIRS, STATE OF HAWAII, HAWAII BROADBAND STRATEGIC PLAN (2012),

[https://cca.hawaii.gov/broadband/files/2015/01/Hawaii\\_Broadband\\_Strategic\\_Plan\\_Dec\\_2012.pdf](https://cca.hawaii.gov/broadband/files/2015/01/Hawaii_Broadband_Strategic_Plan_Dec_2012.pdf)

<sup>2</sup> *Transforming the 2.5 GHz Band*, Notice of Proposed Rulemaking, 33 FCC Rcd 4687(7) (2018).

<sup>3</sup> *Transforming the 2.5 GHz Band*, Report & Order, 34 FCC Rcd 5446(7), para. 49-50 (2019) [hereinafter “Report & Order”].

<sup>4</sup> Report & Order, Appendix A, Section 27.1204(b)(1).

108, et seq., as amended; and any lands designated as Tribal lands pursuant to the designation process contained in Section 54.412 of our rules prior to July 10, 2019.”<sup>5</sup> On October 25, 2019, the Commission published its Final Rule on the Tribal Window in the Federal Register.<sup>6</sup>

Mr. Lum, Strategy Officer for the Hawaii Broadband Initiative, learned about the Tribal Window after the Commission released the Report & Order. At that time, Mr. Lum began to assess the important opportunity to increase internet connectivity that Native Hawaiians could harness by obtaining a spectrum license. Mr. Lum also learned that while the Commission expressly included Hawaiian Homelands within the definition of tribal lands eligible for the Tribal Window, the Report & Order omitted Native Hawaiians from the list of eligible applicants for the window, and therefore excluded them from the opportunity to access this spectrum.

On November 22, 2019 three letters were filed in the docket regarding the Tribal Window encouraging the Commission reach out to Native Hawaiians to resolve this matter. The letters were submitted by the Office of Hawaiian Affairs, the Department of Hawaiian Homelands (“DHHL”), and the Office of Governor David Ige of the State of Hawaii. The letters from DHHL and Governor Ige included Mr. Lum as their point of contact on this matter with the Commission.<sup>7</sup>

### **III. Petition for Reconsideration Standard**

Pursuant to Commission rules of practice and procedure, the Commission may accept a petition for reconsideration where an entity addresses an issue previously raised to the Commission; addresses a new issue that could not have been the subject of an earlier petition due

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<sup>5</sup> Report & Order, Appendix A, Section 27.1204(b)(2).

<sup>6</sup> Final Rule, Transforming the 2.5 GHz Band, 84 FR 57343 (October 25, 2019).

<sup>7</sup> See Letter from Sylvia M. Hussey, Office of Hawaiian Affairs, to Marlene Dortch, FCC, WT Docket No. 18-120 (filed Nov. 22, 2019); Letter from William J. Aila, Jr., Department of Hawaiian Homelands, to Marlene Dortch, WT Docket No. 18-120 (filed Nov. 22, 2019); Letter from Governor David Ige, State of Hawai‘i, to Marlene Dortch, FCC, WT Docket No. 18-120 (filed Nov. 22, 2019).



to new information; or the Commission determines that consideration of the facts or arguments relied on is required in the public interest.<sup>8</sup>

Here, Mr. Lum's petition meets the reconsideration standard of review because it addresses problems with the Tribal Window eligibility criteria discussed in the three letters to the Commission filed on November 22, 2019. While this issue was not raised before the Commission prior to the Report & Order, that is because no reasonable party would have anticipated that the Commission would include Hawaiian Homelands as eligible for the Tribal Priority Filing Window, but omit Native Hawaiians from the list of eligible applicants that could participate in that window. In all events, this petition raises issues of concern to the public, including Native Hawaiians.

#### **IV. Argument**

##### **The Commission Should Reconsider Its Decision to Omit Native Hawaiians from the List of Entities Eligible for the Tribal Priority Window.**

The Commission should reconsider its decision to omit Native Hawaiians from the list of eligible entities for the Tribal Priority Filing Window. Reconsideration is warranted because the eligibility rules as currently written leave Native Hawaiians out of this important opportunity to obtain a spectrum license, and adding Native Hawaiians to the eligibility criteria is consistent with the Commission's goal "to provide Tribal Nations with an opportunity to... address the communications needs of their communities."<sup>9</sup>

The Report & Order requires an eligible party to be (1) a federally recognized tribe, (2) an Alaska Native Village, or (3) an entity owned and controlled by a federally recognized tribe

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<sup>8</sup> 47 CFR §§ 1.106(c), 1.429(b); see Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization, Report and Order, 26 FCC Rcd 1594, 1627-28, 1634-35 (2011).

<sup>9</sup> Report & Order, para. 47.

or Alaska Native Village.<sup>10</sup> Native Hawaiians do not fall under those categories; they are neither a federally recognized tribe or an Alaska Native Village as defined in the Report & Order.<sup>11</sup> While Hawaiian Homelands qualify as rural tribal lands in the Report & Order, and thus available spectrum licenses may be claimed over them,<sup>12</sup> no Native Hawaiian entity is currently eligible to claim such a license under the rules promulgated for eligibility. This is a material error warranting reconsideration.

Reconsideration of the eligibility rule to include Native Hawaiians is consistent with the Commission's goal "to provide Tribal Nations with an opportunity to... address the communications needs of their communities."<sup>13</sup> Mr. Lum requests the Commission revise the eligibility rule in collaboration with Native Hawaiians, so that they may participate in the Tribal Priority Filing Window. Including Native Hawaiians in this revision ensures that they are not left out of important opportunities like this one, affirms the FCC's long-standing policy of including Native Hawaiians in consultation efforts,<sup>14</sup> and supports the Commission's public interest goal to close the digital divide that still affects indigenous peoples across the United States.

## V. Conclusion

For the foregoing reasons, Mr. Lum requests that his petition for reconsideration, on the above grounds, be granted.

Sincerely,



Burt Lum

Hawaiian Broadband Initiative

Department of Business, Economic Development & Tourism

Date: November 25, 2019

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<sup>10</sup> Report & Order, para. 49-50.

<sup>11</sup> Report & Order, Appendix A, Section 27.1204(b)(1).

<sup>12</sup> Report & Order, para. 51; 47 C.F.R. § 54.5.

<sup>13</sup> Report & Order, para. 47.

<sup>14</sup> See, e.g., Connect America Fund, 26 FCC Rcd. 17663, 17868-69, para. 637 (2011).